

IN THE HIGH COURT OF CHHATTISGARH AT BILASPURCriminal Appeal No. 960/2001.APPELLANT/ACCUSED
(In Jail): Ramlal son of Lakhamu, aged 45
years, resident of village -
Dogaripara Timnar, P.S. Narayanpur
Distt. Bastar (CG).V E R S U SRESPONDENT: State of Chhattisgarh
Through : P.S.-Narayanpur,
Distt. Bastar (C.G.).APPEAL UNDER SECTION 374 (2) OF CRIMINAL PROCEDURE CODE

BBS

Filed on 6/10/01
by Sri Subhakar Yadav
Associate

R. to AR

6/10/01

आदेश पत्रक

G.A. 960/

मामला क्रमांक

सन् 2001

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>25.07.2002</u> Shri Subhash Yadav, counsel for the appellant. Dr. N.K. Shukla, Additional Advocate General for the respondent / State. Heard both the counsel. This appeal is posted for admission today. Dr.N.K.Shukla takes notice for the respondent / State. With the consent of both the learned counsel, the appeal is admitted for hearing and disposed of on merits. The appellant was prosecuted for the commission of the offence punishable under Section 20(b)(1) of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act') by the Narayanpur Police. After completing the investigation, Police filed the charge sheet and thereafter the learned Special Judge (N.D.P.S. Act), Jagdalpur, by his judgment and order dated 11.09.2001 passed in Special Case No.20/2001, convicted the appellant for the commission of the aforesaid offence and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.7,000/-, in default of payment of fine to further undergo rigorous imprisonment for one year. It is this judgment	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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	and order passed by the learned Special Judge that is challenged by the appellant in this appeal.	
	On behalf of the appellant, one of the grounds ^{alleged} is that the prosecution had not produced the Chemical Examiner's report to prove that the substance seized from the possession of the appellant was Ganja. The case of the prosecution is that the appellant was found in possession of 25 Kgs. of Ganja ⁱⁿ from his house. The records of the case have been received. It is seen from the records that the Court below has marked one document as Annexure P-24.	
	Learned counsel for the appellant has pointed out that Exhibit P-24 is not the report of the Chemical Examiner, but it is an acknowledgement issued from the Office of the Chemical Examiner for receiving certain articles sent by the Police for conducting the test and it is not the report of the Chemical Examiner issued after examining the article sent by the Police. This shows that the prosecution has not produced the Chemical Examiner's Report before the Court to prove that the material seized from the house of the appellant was in fact Ganja.	
	Dr.N.K.Shukla, learned Additional Advocate General appearing for the respondent / State submitted that since the articles seized from the house of the appellant were sent to the Chemical Examiner and by mistake the Chemical Examiner's report has not been produced during	

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	the trial before the learned Special Judge. In the circumstances, the matter may be sent back to the learned Special Judge for re-trial. There is some substance in the argument of the learned counsel for the respondent / State. The case of the prosecution is that what was seized from the house of the appellant was Ganja. Therefore, the prosecution has to prove that the same was Ganja. In fact they sent the material to the Chemical Examiner and there is an acknowledgement report (Exhibit P-24) issued from the Office of the Chemical Examiner for having received that material. In the circumstances, I am of the opinion that the prosecution has to be given one more opportunity to produce the Chemical Examiner's report to show that what was seized from the house of the appellant was Ganja. Accordingly, the appeal is allowed and the judgment and order dated 11.09.2001 passed by the learned Special Judge (N.D.P.S. Act), Jagdalpur, in Special Case No.20/2001, convicting the appellant for the commission of the offence punishable under Section 20 (b) (1) of the Act and sentencing him to undergo rigorous imprisonment for three years and to pay a fine of Rs.7,000/-, in default of payment of fine to further undergo rigorous imprisonment for one year, is set aside. The case stands remitted to the learned Special Judge for disposing of the	

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आदेश की दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	aforesaid case afresh after giving the prosecution an opportunity to produce the Chemical Examiner's report and to examine any other witness, if necessary and thereafter to dispose of the case in accordance with law. Ordered accordingly and the appeal stands disposed of. Since the case is sent back for re-trial, I am of the opinion that it is appropriate to release the appellant on bail, till the disposal of the case. Accordingly, it is directed that the appellant be released on bail on his executing a bond in the sum of Rs.10,000/- with two sureties each for his appearance before the said Court on a date to be given to him and continue to appear on all further dates as may be given to him by the said Court, till disposal of the aforesaid case by the learned Special Judge. The learned Special Judge (N.D.P.S. Act) is directed to dispose of the aforesaid case within three months from the date of receipt of the copy of this order. Send a copy of this order to the learned Special Judge (N.D.P.S. Act), Jagdalpur, forthwith. Parties are entitled for certified copy of this order:	
Soma		Sd/- Chief Justice

[पीछे देखिये]

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